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Mr. [REDACTED], Revenue Service Representative [REDACTED]  
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Assistant Chief Counsel (Income Tax & Accounting)

Home Leave Expenses of U.S. Foreign Ambassadors

This memorandum responds to your request to Joseph Rosenthal, Technical Assistant to the Assistant Commissioner (International), regarding the deductibility of home leave expenses under section 162 of the Internal Revenue Code. You asked whether a U.S. ambassador stationed abroad may deduct on the ambassador's federal income tax return the costs of travel, meals, lodging, etc., paid or incurred on "home leave," as business expenses under section 162.

Section 162 of the Code allows a deduction for all ordinary and necessary expenses paid or incurred in carrying on a trade or business of the taxpayer. These expenses may include costs of travel, meals, and lodging paid or incurred while away from home in pursuit of a trade or business.

In Rev. Rul. 82-2, 1982-1 C.B. 27, the Service agreed to follow the decisions of several courts that had upheld deductions under section 162 of the Code for home leave expenses incurred by foreign service officers. These decisions are based upon a finding in each case that the taxpayer was compelled to take home leave by a provision of the Foreign Service Act, 22 U.S.C. 4083, and State Department Regulations thereunder. Accordingly, the conclusion of Rev. Rul. 82-2 that home leave expenses are deductible for federal income tax purposes is also predicated upon this statutory and regulatory compulsion to take home leave.

We have been advised by the Assistant Legal Advisor for Ethics & Personnel, U.S. Department of State, that generally U.S. ambassadors are exempt from the compulsory home leave provision of the Foreign Service Act. Under the Act, U.S. ambassadors are considered "Chiefs of Missions" and, subject to the exception discussed below, are not covered by the Foreign Service pay and leave system. 5 U.S.C. 6301(2)(xii). The Act provides that the President may authorize a leave of absence for a Chief of Mission. 5 U.S.C. 6305(b). By Executive Order, the President has delegated to the Secretary of State the authority to authorize, but not require, home leave for these individuals. Accordingly,

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Mr. Stan Newman

we believe that these individuals would not be entitled to deduct home leave expenses under section 162 of the Code.

There is an exception to the general rule that U.S. ambassadors are not covered by the Foreign Service pay and leave system. Ambassadors who are also career members of the Senior Foreign Service may elect annually to be subject to the Foreign Service pay and leave system. 22 U.S.C. 3942(b), as amended. Those who are subject to the Foreign Service pay and leave system are subject to the compulsory home leave provision of the Foreign Service Act and, we believe, would be entitled to deduct home leave expenses under section 162 of the Code. Congress repealed this election for career Foreign Service members receiving ambassadorial appointments after December 21, 1987, but reinstated it by amendment to the Foreign Service Act in October 1991. 1992-93 Foreign Relations Authorization Act, section 142, 102d Cong., 1st Sess. (Oct. 28, 1991). Consequently, the number of U.S. ambassadors presently covered by the Foreign Service pay and leave system is relatively small. With the recent change in law, however, all career members of the Foreign Service serving as U.S. ambassadors may make the annual election during an "open season" every April. Thus, the number of individuals covered by the Foreign Service pay and leave system may increase next year.

We hope that this information adequately responds to your request. If we can be of further assistance, please contact David A. Schneider of this office. Mr. Schneider can be reached at (202) 566-6438.

(signed) Robert A. Berkovsky

By: \_\_\_\_\_  
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